

**Town of Amherst**  
**Zoning Board of Appeals - Special Permit**

*DECISION*

**Applicant & Owner:** Alex Hiam  
98 Spring Street  
Amherst, MA 01002

**Date application filed with the Town Clerk:** November 24, 2009

**Nature of request:** Request for a Special Permit to convert the second floor of an existing non-conforming garage into a dwelling unit (studio apartment), under Section 3.3241 and Section 9.22 of the Zoning Bylaw

**Address:** 98 Spring Street (Map 14B, Parcel 36, R-G Zoning District)

**Legal notice:** Published on December 2, 2009 and December 9, 2009 in the Daily Hampshire Gazette and sent to abutters on December 1, 2009

**Board members:** Tom Simpson, Eric Beal, Mark Parent

**Submissions:**

- The ZBA application filed with the Town Clerk on November 24, 2009;
- A Project Summary and Management Plan;
- A Site Plan showing the location and setbacks of the garage and a Parking Plan showing the location of existing parking spaces;
- A Floor Plan, with dimensions;
- A set of two elevations showing the exterior staircase and proposed rear yard setback;
- A set of three photographs of the existing garage;
- A copy of the Town GIS aerial and zoning map;
- Fire Department Review, dated December 1, 2009;
- A revised parking plan, submitted at the public hearing.

**Site Visit:** December 15, 2009

Tom Simpson and Mark Parent met the contractor for the applicant, Ross Hartman, at the site. Eric Beal viewed the site separately. The Board members observed the following:

- The existing, two-story single family dwelling located on the north side of Spring Street, a secondary street;
- The existing driveway and location of the existing two-story, detached garage located at the north west corner of the property;
- The location of the building relative to the approximate location of the northerly (rear) property line and the westerly property line;
- The location of at least three (3) other detached accessory structures that are located in close proximity to other property lines;
- The first and second floor space within the existing garage.

**Public Hearing:** December 17, 2009

The contractor for the applicant, Ross Hartman, presented the application. He stated the following:

- The applicant is seeking a Special Permit to allow the second floor of an existing garage to be converted into a new dwelling unit;
- The dwelling unit would be a studio apartment;
- The second means of egress is proposed to be a spiral staircase located at the back of the garage which would encroach into the required rear yard;
- The Bylaw allows the Board to waive any dimensional requirement of Table 3 if the change will not be more detrimental to the neighborhood;
- The stairs are proposed at the rear of the building to lower construction costs and reduce the aesthetic impact of the stairs on adjacent properties;
- There are several other properties in the neighborhood with structures that do not meet the required setbacks, and some that are more non-conforming than what is proposed.

In accordance with the requirements of Section 3.3241 of the Zoning Bylaw, converted dwelling, the Board identified that:

- The garage was constructed prior to 1964;
- The footprint of the garage is greater than 500 sq. ft. in area;
- The property is connected to Town sewer and water supply;
- The owner will occupy the main residence;
- There are other multi-family dwellings in the vicinity;
- There will be no exterior changes to the garage, other than the addition of the spiral staircase;
- The applicant submitted a revised parking plan. The revised plan shows the two spaces next to the garage to allow for vehicles to adequately turn around. The plan shows six (6) parking spaces provided on the property.

The Board members were informed by staff that the Assessors records show that seven (7) out of 20 properties in the vicinity contain multifamily uses.

The Board members noted that Section 3.3241 (7), states that “*The Zoning Board of Appeals may modify the dimensional requirements of Table 3, to, one time only for any parcel, allow a conversion under Section 3.3241 that would add one additional unit, only if it finds the modification would be in accordance with the provisions of Section 9.22*”.

The remainder of the public hearing consisted of a discussion of the request for the staircase to be located within the required rear yard setback. As indicated in the Project Application Report, the staircase would result in a rear yard setback of approximately 5 feet and 11 inches, where 10 feet is required.

Mr. Simpson acknowledged that the Board may waive or modify the setback requirement but initially objected to allowing the staircase within the required rear yard setback. He stated that there appeared to be alternative locations for the stairs, such as off of the east side or the front (south side) of the garage. He noted that the added expense associated with these alternative locations should not be the sole justification for the Board to consider the request. He stated that there are other structures located within required setbacks, but noted that none of the structures are converted dwellings and that the structures were most likely built prior to the current zoning requirements.

Mr. Simpson stated that there appears to be other viable options to install the staircase in a conforming location and that those options should be further explored, with the waiver of the setback only utilized as a last resort.

Mr. Parent noted that the location of the staircase at the rear of the building is the most logical and effective place for the staircase. He stated that if the staircase was located on the side or front of the building, it would detract from the aesthetics of the garage and would be more of a visual impact to the surrounding properties. He added that the proposed location of the staircase is a result of the interior layout, and changing the location of the egress could require significant changes to the interior design. He stated that the visual impact to adjacent property owners would be minimized by allowing the staircase to be located at the back of the garage and noted that the property behind the subject property is currently vacant and that the installation of a staircase would not impact its potential future use.

Mr. Beal stated that the rear of the building is the most appropriate place for the staircase. He stated that even if that location was the most expensive, it is the most logical location because it reduces the aesthetic impact and therefore the location is less detrimental to the neighborhood than if the staircase was constructed on the side or rear of the garage. He noted that the neighborhood consists of several properties with multifamily residential development and several properties contain structures with non-conforming setbacks, some of which are more non-conforming than the proposed staircase.

Mr. Simpson MOVED to close the evidentiary portion of the public hearing. Mr. Beal seconded the motion and the Board VOTED unanimously to close the public hearing.

**Public Meeting:**

The Board members noted that screening should be provided between the proposed parking spaces adjacent to the garage and the property to the west. The Board members agreed that the screening shall consist of a solid fence, at least 4 feet in height, to block the potential impact of vehicle headlights.

The Board members discussed the location of the staircase. Mr. Simpson stated that although he disagrees that the location of the staircase at the rear building is the only viable option, he is agreeable to allowing the staircase in the rear based on the arguments of the petitioner and other Board members. He noted that the converted dwelling section of the Bylaw is the only one with the provision for the Board to grant a waiver of the dimensional requirements, otherwise, the proposal would likely not be allowed without a variance.

The Board members discussed the conditions that would be placed on the Special Permit if approved, including but not limited to: the construction of a sidewalk from the exterior staircase to the driveway, the installation of a fence adjacent to the proposed parking area, owner occupancy of the main residence and expiration upon change of ownership.

**Specific Findings:**

The Board found under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 & 10.381 - The proposal is suitably located in the neighborhood in which it is proposed and is compatible with existing Uses and other Uses permitted by right in the same District.

The conversion of the second floor of the garage into a dwelling unit is suitably located and compatible with the existing uses because there are numerous other properties containing multi-family uses in the neighborhood. Additionally, two-family dwellings in the R-G District are allowed by right. As identified by the applicant, there are several properties in the vicinity with detached accessory structures that do not meet the current building setback requirements. Except for the exterior staircase, there are no other changes to the exterior of the building.

10.382 - The proposal would not constitute a nuisance due to air and water pollution, flood, noise, odor, dust, vibration, lights, or visually offensive structures or site features. The proposal will not constitute a nuisance because the permit is conditioned to require all exterior lighting be downcast and a solid fence be erected near the parking area to prevent light spillage onto adjacent property. The number of tenants will be limited to two (2) to reduce the potential impact from noise. Additionally, the only changes to the building will be the construction of an exterior staircase, which will be located at the rear of the garage and therefore less visible to surrounding property owners.

10.383 - The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians. The permit requires the erection of a solid fence, at least four (4) feet in height in order to eliminate the shining of vehicle headlights on the adjacent property. The permit requires the creation of a lighted sidewalk to provide safe pedestrian access from the exterior staircase to the parking area.

10.384 & 10.385 - Adequate and appropriate facilities would be provided for the proper operation of the proposed use and reasonably protects the adjoining premises against detrimental or offensive uses on the site, including air and water pollution, flood, noise, odor, dust, vibration, lights or visually offensive structures or site features. The property contains sufficient area for an additional dwelling unit (although this is not required under the converted dwelling section of the Bylaw), the appropriate number of parking spaces and designated areas for the storage of items and rubbish are provided. The property is connected to town sewer and water.

10.386 & 10.387 - The proposal ensures that it is in conformance with the Parking and Sign regulations (Articles 7 and 8, respectively) of this Bylaw and provides convenient and safe vehicular and pedestrian movement within the site, and in relation to adjacent streets, property or improvements. The approved parking plan shows parking for up to six (6) vehicles, where only four (4) spaces are required by the Bylaw, with sufficient turnaround area to prevent backing of vehicles onto Spring Street. The permit requires screening of the parking area from the adjacent property and the creation of a lighted walkway from the exterior staircase to the parking area. There are no signs proposed.

10.389 - The proposal provides adequate methods of disposal and/or storage for sewage, refuse, recyclables, and other wastes resulting from the uses permitted or permissible on the site, and methods of drainage for surface water. The permit requires an area be provided within the garage for storage of tenant belongings as well as for recyclables. The permit requires that containers be provided outside for keeping household rubbish. The property is connected to the town sewer and water supply.

10.392 & 10.393 - The proposal provides adequate landscaping, including the screening of adjacent residential uses and provides protection of adjacent properties by minimizing the intrusion of lighting. The permit requires the erection of a solid fence; at least four (4) feet in height to block the intrusion of lights associated with vehicle headlights and requires all exterior lighting to be downcast to prevent light spillage onto adjacent properties.

10.398 - The proposal is in harmony with the general purpose and intent of this Bylaw. The proposal provides an additional dwelling unit in close proximity to the downtown area. The proposal includes adequate land area and parking for the residential use. The proposal is compatible with the existing uses in the neighborhood because there will be no changes to the exterior of the existing structure except for the staircase. The main residential structure on the property will be owner occupied, and there are several other multi-family residential structures in the vicinity.

Section 3.3241 (7) – *The Zoning Board of Appeals may modify the dimensional requirements of Table 3, to, one time only for any parcel, allow a conversion under Section 3.3241 that would add one additional unit, only if it finds the modification would be in accordance with the provisions of Section 9.22*”. The Board members found that a waiver to allow the construction of the staircase with a rear yard setback of 5 feet 11 inches, where 10 feet is required, will be in accordance with Section 9.22 (which states that the alteration and/or enlargement will not be substantially more detrimental to the neighborhood than the existing nonconforming building), for the following reasons:

- A. There are several properties in the vicinity with detached accessory structures that do not meet the current building setback requirements;
- B. Except for the exterior staircase, there are no other changes to the exterior of the building;
- C. The exterior staircase will be located at the rear of the garage and will be less visible to surrounding property owners than other locations, such as the side or front of the structure.

#### **Public Meeting – Zoning Board Decision**

Mr. Simpson MOVED to waive the rear yard setback requirement to allow the construction of an exterior staircase. Mr. Beal seconded the motion and the Board VOTED unanimously.

Mr. Beal moved to APPROVE the application with conditions. Mr. Simpson seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to grant a Special Permit, ZBA FY2010-00008, to convert the second floor of an existing non-conforming garage into a dwelling unit (studio apartment), under Section 3.3241 and Section 9.22 of the Zoning Bylaw and to allow the construction of an exterior staircase within the required rear yard setback under Section 3.3214 (7) of the Zoning Bylaw, at 98 Spring Street (Map 14B, Parcel 36, R-G Zoning District), with conditions.

\_\_\_\_\_  
THOMAS SIMPSON

\_\_\_\_\_  
ERIC BEAL

\_\_\_\_\_  
MARK PARENT

FILED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2010 at \_\_\_\_\_,  
in the office of the Amherst Town Clerk \_\_\_\_\_.  
TWENTY-DAY APPEAL period expires, \_\_\_\_\_ 2010.  
NOTICE OF DECISION mailed this \_\_\_\_\_ day of \_\_\_\_\_, 2010  
to the attached list of addresses by \_\_\_\_\_, for the Board.  
NOTICE OF PERMIT or Variance filed this \_\_\_\_\_ day of \_\_\_\_\_, 2010,  
in the Hampshire County Registry of Deeds.

**Town of Amherst**  
**Zoning Board of Appeals**

*SPECIAL PERMIT*

The Amherst Zoning Board of Appeals hereby grants Special Permit, ZBA FY2010-00008, to convert the second floor of an existing non-conforming garage into a dwelling unit (studio apartment), under Section 3.3241 and Section 9.22 of the Zoning Bylaw and to allow the construction of an exterior staircase within the required rear yard setback under Section 3.3214 (7) of the Zoning Bylaw, as applied for by Alex Hiam, at 98 Spring Street (Map 14B, Parcel 36, R-G Zoning District), with the following conditions:

1. The dwelling unit and exterior staircase shall be constructed in accordance with the plans, prepared by Ross Hartman, dated November 2, 2009 and stamped approved on December 17, 2009.
2. Six (6) parking spaces shall be provided as shown on the plan prepared by Studiozed, dated July 8, 2009 and stamped approved on December 17, 2009.
3. A solid fence, at least four (4) feet in height, shall be installed adjacent to the parking area next to the garage, as demarcated on the plan prepared by Studiozed, dated July 8, 2009 and stamped approved on December 17, 2009.
4. No more than two (2) tenants shall occupy the new dwelling unit above the garage and the unit shall be managed in accordance with the Management Plan, stamped approved on December 17, 2009.
5. The ground floor landing of the exterior spiral staircase shall exit to the east and a sidewalk, consisting of a minimum of compacted gravel, shall be installed from the staircase to the driveway.
6. The walkway shall be lit by at least three (3) lights positioned on the building and in a manner to adequately light the walkway.
7. All exterior lighting fixtures, including those fixtures intended to light the walkway, shall be downcast to prevent light spillage onto adjacent properties.
8. Any propane, oil or other above-ground fuel tanks shall be located on the east side of the garage and shall be shielded from the road with materials matching, or compatible with, the exterior of the garage.
9. There shall be weatherproof trash receptacles provided at the exterior ground level entrance of the unit.
10. Recyclable containers and a lockable storage area shall be provided in the garage for use by the tenant (s).
11. Reflective numbers indicating the street and unit numbers shall be installed adjacent to Spring Street and shall be visible in both directions.
12. The owner shall register the rental unit with the Amherst Board of Health.
13. The main residence shall be owner occupied.
14. This Special Permit shall expire upon change of ownership of the property.

---

THOMAS SIMPSON, Chair  
Amherst Zoning Board of Appeals

---

DATE